



# ENVIRONMENTAL QUALITY COI

Land Use/Environmental

Trends Subcommittee

May 4, 2000

Exhibit 1

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## MEMORANDUM

**To:** Land Use/Environmental Trends Subcommittee Members

**From:** *mm* Mary Vandembosch  
444-5367

**Date:** April 27, 2000

**Subject:** Use of Setback Requirements to Address Residential Development in Riparian Areas by Selected Montana Communities

## Introduction

This memorandum is in response to your request for more information about the use of local setback requirements to address residential development in riparian areas.

I interviewed planning staff from five jurisdictions about their setback requirements. These jurisdictions were: Chouteau County, Madison County, Park County, Powell County, City of Missoula and Missoula County. A summary of the requirements for these jurisdictions is presented in Table 1. Other jurisdictions have also adopted setback requirements. These include (but are not limited to): City of Bozeman, City of Polson, Carbon County and Ravalli County.

## Protection Goals

Local communities use setback requirements to accomplish a diverse set of goals. The five jurisdictions I interviewed developed setback requirements to protect one or more of the following characteristics:

- Water quality and quantity

*Draft for Discussion*

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- Fish and wildlife habitat
- Fragile areas
- Historical or archeological sites
- Wetlands
- Riparian habitat
- River channel
- Flood control
- Recreational uses
- Visual values
- Economic values
- General natural resource goals
- General quality of life
- Preservation of prime agricultural land

### *Discussion*

The appropriateness and effectiveness of the tool will depend on the goal. Integration with other efforts (e.g., watershed planning, floodplain regulation and management, etc.) is important, particularly when there are multiple objectives.

## **Type of Regulation**

Three of the jurisdictions that I interviewed established setback requirements through their subdivision regulations and three included them in zoning or development permit regulations.

### *Discussion*

Advantages and disadvantages of subdivision regulations and zoning regulations include:

- All jurisdictions are required to adopt subdivision regulations.
- Subdivision regulations only apply to land being subdivided and subject to subdivision review. In jurisdictions where the requirement is only included in subdivision regulations, application will be inconsistent. The goals may not be achieved and residents may regard the restrictions as unfair.
- Zoning regulations apply to all new development.
- Zoning outside of cities is uncommon and controversial in areas where there is interest in development

## Determination of Setback

There are three general approaches used: a fixed distance, a performance standard, and a combination of both. An example of a fixed distance standard is the Powell County requirement for a 25 yard setback from the Blackfoot River. An example of a performance standard is the approach used in the City of Missoula and Missoula County. The "area of riparian resource" is defined based on habitat. It includes a buffer area of varying width based on the potential for development to impact wildlife habitat, water quality and quantity, fish, or other aquatic resources. Another example of a performance standard would be a requirement restricting development where it can be seen from the river.

Chouteau County uses a combination of a fixed standard and a performance standard within the district that extends from the Coal Banks Landing Recreation Area to the Eastern Chouteau County Line. Residential development must be set back three horizontal miles from either side of Missouri River when development would be visible from any point between the high water marks.

The Park County Subdivision Regulations offer another example of a combination approach. Setback requirements can be increased based on the following factors:

- A riparian area that is greater than 100 feet wide.
- The location of critical wildlife habitat on the land proposed for subdivision.
- Protection of riverbank stability, trees, water quality and trout spawning areas.
- Location of an important historic or pre-historic site on the property.

### *Discussion*

Advantages of fixed setback requirements are:

- There is much less potential for debate and disagreement about a fixed distance.
- People know and understand what a fixed distance is.
- It doesn't require costly studies or mapping to determine.

The primary disadvantage of a fixed standard is that the riparian area does not extend a fixed distance from the water body. The setback will be larger or smaller than the riparian area in some places. If it is larger, the requirement may be more restrictive than necessary (depending on the goals of the requirement). If it is smaller, the community may not accomplish its goals. Once again, the effectiveness of the tool depends on the goal or goals.

## Variances

The communities that I contacted typically have general criteria for granting a variance. Criteria from the *Model Subdivision Regulations* published by the Department of Commerce (1993) allow approval of variances when:

- Granting a variance will not be detrimental to public health, safety, or general welfare or injurious to other adjoining properties.
- Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, an undue hardship to the owner would result if the strict letter of the regulations were enforced.
- The variance will not cause a substantial increase in public costs.
- The variance will not place the subdivision in nonconformance with any adopted zoning regulations or comprehensive plan.

Variances may not be granted to build in the floodway of a flood of 100-year frequency.

The City of Missoula's zoning ordinance authorizes alternative compliance. Alternative compliance may be authorized if:

- The proposed construction will not adversely affect the City of Missoula's Comprehensive Plan.
- The proposed construction conforms to the adopted neighborhood plan for the area.
- There are no other feasible measures that can be taken to further minimize the potential adverse effect on the riparian resource and still avoid conflict with City Council Policy or still provide extraordinary benefit.

The construction plan must generally comply with general provisions for areas of riparian resource.

When I spoke with the Madison County planner, proposed amendments to the subdivision regulations were under consideration. These proposed regulations would require submittal of an engineering survey and proposed building design before a variance can be granted. The County could impose restrictions to ensure that the building is protected. Furthermore, the County would have the flexibility to establish a greater restriction somewhere else in the subdivision (i.e., if a development on one lot is allowed within the setback distance, development on another lot must be farther than the setback distance).

## Effectiveness

None of the jurisdictions had data that could be used to evaluate effectiveness. In general, the jurisdictions with less development pressure indicated that the regulations were not challenged.

Local planners were asked to identify strengths and weaknesses of their regulations. In addition to those noted in the previous sections include:

- The City of Missoula and Missoula County have established a buffer zone that may include high terraces with no riparian vegetation. The setback is needed to prevent erosion as well as adverse impacts on water quality. Landowners do not always believe that an area with no riparian vegetation is part of the buffer zone.
- The City of Missoula and Missoula County require a riparian management plan. The plan is inserted into the covenants. The landowners do not always implement the plan. The local governments do not have the staff to educate people about the importance of the plan and how to implement it.
- It can be difficult to know when development is going to occur if building permits are not required. Powell County has set up a process where a development certificate is required. This is a process to share information among the various units of county government (e.g., sheriff, emergency services). The sanitarian will not review a proposal unless a development certificate has been issued.

## Other Regulations

Other regulatory tools that may affect residential development in riparian areas include:

- Floodplain Regulations
- Sanitation in Subdivisions Regulations
- Montana Natural Streambed and Land Preservation Act and Montana Stream Protection Act
- Local Sanitary Regulations
- Conservation District Land Use Regulations

These are not reviewed in detail here; however, some observations from local planners are presented. (Information was provided in your notebook.)

### *Regulation of Bank Stabilization*

There may be a relationship between regulations governing bank stabilization and

residential development in riparian areas. If building is allowed right next to the stream, the homeowner may want to protect the house with riprap or some other bank stabilization device. This will have additional impacts on the river.

Conversely, if certain bank stabilization activities or devices are not allowed, a landowner may be discouraged from building their home too close to the river. Missoula recently adopted floodplain regulations that prohibit:

- Large scale clearing of native vegetation within 50 feet of the highwater mark.
- The use of riprap and other rock structures to protect new residences.

### *Floodplain Regulations*

As noted previously, floodplain regulations may limit bank stabilization activities and thereby serve to discourage development in riparian areas. Park County notifies homeowners that obtain a permit to build in the floodplain that they are not assured of a permit for bank stabilization. Montana Department of Natural Resources and Conservation (DNRC) floodplain regulations prohibit building in floodway zones. The floodway is the area considered necessary to carry flood waters downstream. A permit is required to build in the flood fringe zone--the area that would be inundated by a 100-year flood. Local governments are required to adopt floodplain regulations at least as stringent as the DNRC regulations upon receipt of floodplain information.

According to local planners, some limitations of floodplain regulations include:

- The riparian area is not the same as the floodplain or floodway.
- Unless regulations are more stringent than the minimum requirements, building is not prohibited in the floodplain. However, the Powell County planner noted that residents in the area are aware of the potential for and consequences flooding.
- Floodplain regulations do not apply to small drainage areas.
- The landowner can fill the area and still develop.

### *Sanitary Restrictions*

The Montana Department of Environmental Quality (DEQ) regulates subdivisions under the Sanitation in Subdivisions Act. DEQ rules provide that individual sewage treatment systems may not be located within 100 feet horizontal distance from the floodplain of any water course. A greater distance may be required when conditions warrant. The location of septic systems in relation to ground water and water supply wells is also restricted. Local boards of health also have the authority to regulate septic systems. Local governments are required to include standards for water supply and sewage in their subdivision regulations.

Some local planners felt that these regulations served to discourage development near rivers. Others noted that homeowners would simply build the house lower and pump the sewage up to higher ground. The effect may depend on the hydrology of the area.

## **Ideas**

I asked local planners if they had any ideas about what could be done at the state level to enhance their efforts to deal with residential development in riparian areas. Ideas include:

- Strengthen state floodplain regulations in order to prohibit residential development in the floodplain.
- Funding for floodplain mapping. (Lack of money for mapping is a barrier to designation of the floodplain/floodway.)
- Some suggested statewide setbacks, while one indicated a strong preference for local options due wide variations in the rate of development, etc.
- Definition and mapping of riparian areas.

**Table 1. Comparison of Selected Local Setback Requirements**  
**Draft: 4/5/00**

<b>Jurisdiction</b>	<b>Category</b>	<b>Description</b>	<b>Protection Goals</b>	<b>Variance</b>
Chouteau County	Development Regulations	<p><b>Coal Banks Landing Recreation Area to Eastern Chouteau County Line:</b>  Residential development must be set back 3 horizontal miles from either side of Missouri River when development would be visible from any point between high water marks.</p> <p><b>Fort Benton City Planning Board boundary to Coal Banks Landing Recreation Site (residential development):</b></p> <ul style="list-style-type: none"> <li>- All structures set back 400 horizontal feet.</li> <li>- 400 linear feet of river frontage for all lots fronting river.</li> <li>- Within the area extending 1/2 mile beyond the high water marks: max. density 1 dwelling unit per 8 acres; no more than 20 dwelling units per subdivision or development; and mobile homes may not be &gt; 5 years old when placed on lot, must be skirted w/in 60 days.</li> </ul>	<p>Preserve visual values. Protect rivers and streams.</p> <p>Discourage development of residential and vacation subdivisions in certain areas.</p>	General appeal language.
Madison County	Subdivision Regulations	<p>500 feet from Madison River  150 feet from Beaverhead, Big Hole, Ruby, South Boulder and Jefferson Rivers</p>	<p>Economic and recreational values of rivers. Visual aesthetics. General natural resource and environmental goals. Wildlife.</p>	General appeal language. New variance language proposed.



Jurisdiction	Category	Description	Protection Goals	Variance
City of Missoula and Missoula County	Subdivision regulations (city and county) Zoning regulations (city)	Area of riparian resource defined based on habitat. Includes buffer area of varying width based on potential for development to impact wildlife habitat, water quality and quantity, fish, or other aquatic resources. Construction prohibited within this area, with some exceptions. More flexibility allowed in buffer area.	River channel. Riparian habitat and associated fish and wildlife. Water quality and quantity. Flood control. Bio-diversity forage. Recreational uses. Visually attractive environment.	Alternative compliance provision specifically for riparian resource zoning district. General variance criteria.
Park County	Subdivision Regulations	100 feet from Yellowstone, Boulder and Shields rivers. 50 feet from other perennial streams. May be increased under certain conditions: riparian area > 100 feet wide; critical wildlife habitat; protection of riverbank stability, trees, water quality and trout spawning areas; location of important historic or pre-historic sites.	Fish and wildlife habitat. Water quality. Important historical or archeological sites.	General variance criteria.
Powell County	Development Regulations	All developments shall be designed and constructed to minimize the disturbance of stream banks, lake shores and riparian areas. <b>Blackfoot River:</b> No new residential, commercial, or industrial structures allowed within 25 yards (75 feet) of river's edge or flood plain. Exception for accessory agricultural structures. <b>Clark Fork and Little Blackfoot rivers:</b> No new residential, commercial, or industrial structures allowed within flood plain. Exception for accessory agricultural structures.	<b>Blackfoot River:</b> Agricultural land use. Recreational use of river. Visual values. <b>Little Blackfoot River:</b> Agricultural land use. <b>Clark Fork River:</b> Agricultural land use. Prevention of contamination from Superfund site.	General variance criteria.

Note: All set backs are from high water mark unless otherwise stated.